

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1448 - SB 1663

February 11, 2016

SUMMARY OF BILL: Enhances the offense of unlawful photographing in violation of privacy to a Class D felony.

Removes the distinction between misdemeanor and felony unlawful photographing in violation of privacy under the definition of "sexual offense" for purposes of the sex offender registry.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$6,162,100/Incarceration*

Decrease Local Expenditures – Exceeds \$18,000/Incarceration**

Assumptions:

- Unlawfully photographing someone in violation of his or her privacy is a Class A misdemeanor, unless (1) the defendant disseminates the photo or the victim is less than 13 years of age, in which case it is a Class E felony; or (2) the defendant disseminates the photo and the victim is less than 13 years of age, in which case it is a Class D felony.
- The bill would enhance unlawfully photographing a person in violation of his or her privacy to a Class D felony, regardless of the surrounding circumstances.
- Statistics from the Administrative Office of the Courts (AOC) show an average of 9.6 convictions per year over the last five years for Class A misdemeanor unlawful photographing in violation of privacy.
- These represent convictions at the state trial court level. It is assumed that the number of convictions in state trial court represent 10 percent of the convictions at the general sessions court level. It is assumed that there are 96 (9.6 x 10) total convictions each year for Class A misdemeanor unlawful photographing in violation of privacy.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for 11 (96 x .1178) additional admissions for a total of 107 (96 + 11).
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2016 is \$67.73.
- The average time served for a Class D felony is 2.32 years (847.38 days).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based

- on 107 offenders serving an additional 2.32 years (847.38 days) for a total of \$57,393.05 (\$67.73 x 847.38 days). The cost for 107 offenders is \$6,141,056.07 (\$57,393.05 x 107).
- Statistics from the AOC show an average of 2.2 convictions per year over the last five years for Class E felony unlawful photographing in violation of privacy.
 - According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of these admissions.
 - The average time served for a Class E felony is 1.47 years and the average time served for a Class D felony is 2.32 years. The bill will result in each offender serving an additional 0.85 years (2.32 – 1.47).
 - According to the DOC, 33.3 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.3 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x .333 = 0.67 offenders).
 - The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender [2 offenders – 1 (recidivism discount)] serving an additional 0.85 years (310.46 days) for a total of \$21,027.46 (\$67.73 x 310.46 days).
 - The total recurring increase in state incarceration costs is \$6,162,083.53 (\$6,141,056.07 + \$21,027.46).
 - The bill will not create any new cases. It is assumed that the AOC, District Attorneys General Conference, and District Public Defenders Conference can handle any impact within their existing resources.
 - The bill will result in additional defendants registering on the sex offender registry. It is assumed that the Tennessee Bureau of Investigation (TBI) can handle the additional registrants within their existing resources.
 - The TBI confirms it can handle the impact within its existing resources.
 - The bill will result in approximately 107 misdemeanor cases per year being enhanced to felonies. The financial burden of housing those convicted individuals shifts from the local governments to the state.
 - Fiscal Review does not have sufficient information to reasonably determine the percentage of convictions that result in jail or the average time served per conviction. However, it is reasonable to assume that at least 10 offenders served no less than 30 days each.
 - The estimated 2016 cost per inmate per day for local jails is \$60.00.
 - It is assumed that the recurring decrease in local incarceration costs exceeds \$18,000 (10 offenders x 30 days x \$60.00).

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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